

PUBLIC WORKS CONTRACT ARBITRATION COMMITTEE MINUTES

June 8, 2004

The meeting was called to order at 11:21 a.m. by Co-chairperson Tim McGowan, representing the construction industry. Other voting members present were David McCosker, also representing the construction industry; John Brooks, representing the Department of General Services (DGS); William McDonald, representing the Department of Water Resources; and Robert Pieplow, representing the Department of Transportation (Caltrans). Member Cecil Mark was not in attendance. Non-voting member Ronald Diedrich, Director of the Office of Administrative Hearings (OAH), was present. Others present included Steve Cameron, Caltrans; Margaret Farrow, OAH; Carol Rader, DGS; and Phoenix Vigil, OAH.

I. MINUTES OF THE FEBRUARY 9, 2004 MEETING

The draft minutes of the February 9, 2004 meeting were adopted with a minor clerical change.

II. ADMINISTRATOR'S REPORT

New members

The administrator welcomed two new committee members: Ron Diedrich, Director of the Office of Administrative Hearings, and John Brooks, Deputy Director (acting) of the Real Estate Services Division, Department of General Services.

New co-chairperson

Robert Pieplow volunteered to be the new department co-chairperson for the Committee, replacing the DGS representative. Mr. Pieplow will chair the next two committee meetings.

Regulation status

The administrator reported on the status of the regulation package. OAH resubmitted the rule package in order act upon the Office of Administrative Law's (OAL) 120-day

timeline and requested approval of sections 1395 and 1398; the Committee-generated regulations. Sections 1395 and 1398, previously used as guidelines by the Committee in certifying arbitrators to the panel, were approved effective June 1, 2004, and are now posted on OAH's website.

The regulations jointly-enacted by the three department heads were rejected for additional approvals by the three public agencies. OAH will request that, upon approval, OAL make these regulations effective upon filing with the Secretary of State's Office.

The committee discussed alternative means of publication of the PWCA booklet of statutes and regulations, however, ultimately it was decided that since OAH has a large number of the 1997 PWCA regulation booklets remaining, OAH will continue to produce supplements. OAH will prepare a new supplement to the 1997 PWCA regulation booklet when the jointly-enacted regulations are approved by OAL and will distribute the supplement to all interested parties. In addition, the new supplement will be available on the internet for parties in arbitration to download and print.

The administrator estimated that the remaining regulations could be resubmitted to OAL in approximately 30 days. Signatures from two departments and three agencies are necessary before the regulations are finalized and resubmitted to OAL for approval. In addition, the Water Commission must also sign off on the regulations. The Water Commission is scheduled to meet on June 11, 2004.

Program deficient and filing fees

The administrator recounted OAH's continuing shortfall in income versus expenses. The Director advised that the program's costs are approximately \$150,000 a year and roughly only 50% is recouped. The increase in filing fees in June 2002 simply did not create enough revenue to cover OAH's operating expenses for the program.

The Committee discussed several options including doubling the filing fees, an annual fee for each active case, and the possibility of an administrative or case service fee similar to that as charged by the AAA. It was decided that staff will conduct further research into the issue and propose a solution at the next Committee meeting.

Arbitrator news

Frederick Graebe submitted a request to be removed from the PWCA panel of arbitrators. Mr. Graebe commented that he enjoyed his service as an arbitrator and hoped that the program remained successful.

Justice George Paras recently suffered a heart attack during the start of a two-week arbitration hearing. Unfortunately Justice Paras did not feel that he could continue serving as an arbitrator and withdrew from the PWCA arbitrator panel. Justice Paras has been an arbitrator for the PWCA Program for over 20 years and has heard nearly 40 cases before the Public Works Contract Arbitration Program. We wish Justice Paras a speedy recovery and hope for a quick return to service as an arbitrator.

Reports

The Committee was provided with a copy of the PWCA statistical report and a report of cases heard by each active arbitrator.

III. REVIEW OF ARBITRATOR APPLICATIONS

Judge William Gallagher and Peter Ippolito were recertified to the arbitrator panel.

IV. NEW BUSINESS/PUBLIC COMMENT

No new business was presented.

V. SCHEDULING OF NEXT MEETING

The next meeting is scheduled for Monday, October 18, 2004 at 10:00 a.m.